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and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1989

Addendum

ECUADOR *

[28 February 1991]

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* The present document contains the additional report requested by the Committee against Torture at its fifth session at the end of the consideration of the initial report of Ecuador on 14 November 1990 (CAT/C/SR.61).

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PART I

A. Paragraph 1

Title II, section I of the current Political Constitution of Ecuador establishes the rights of individuals. Article 19 explicitly states:

"Without prejudice to other rights necessary for the full moral and material development deriving from the nature of the individual, the State guarantees:

1. Inviolability of life and personal integrity. There is no death penalty. Torture and all inhuman or degrading treatment are forbidden."

Corresponding legislation:

Penal Code, article 205:

"Persons who have issued or executed an order to torture prisoners or detainees by holding them incommunicado for more time than the law permits, or by using shackles, stocks, bars, handcuffs, rope, insanitary cells or other forms of torture, shall be punished by one to five years' imprisonment and deprivation of their political rights for the same length of time."

Penal Code, article 206:

"Neither insecurity in prisons, nor the dangerous nature of the detainee or prisoner, nor his rebellious conduct may serve as an excuse in the cases covered by the previous article."

For its part, article 19 (17) of the Political Constitution states as follows:

"... The State guarantees: ... personal freedom and security. As a result:

(a) All forms of slavery or servitude are prohibited;

(b) No person may be imprisoned for debts, costs, fees, taxes, fines or other obligations, except in the case of compulsory maintenance;

(c) No one may be punished for an act or omission which, at the time when it occurred, was not classified or punishable as a criminal offence, or be subjected to a penalty not provided for by the law. In case of conflict between two criminal laws, the less severe one shall be applied, even if it is subsequent to the offence.

In case of doubt, the criminal law shall be applied in the manner most favourable to the accused.

The purpose of the penal system shall be the re-education, rehabilitation and social reintegration of prisoners."

Corresponding legislation:

Penal Code, article 2:

"No one may be punished for an act that is not expressly classified as an offence by criminal law, or be subjected to a penalty not provided for by the law.

The offence has to be classified as such and the penalty established prior to the act.

An act shall cease to be punishable if it has been declassified as an offence by a law adopted after it was committed, and if a conviction has already been handed down, the sentence shall be annulled, regardless of whether it has started to be served.

If the penalty established at the time of the sentence is different from that in force at the time the offence was committed, the less severe penalty shall be applied.

In general, all subsequent laws relating to the effects and abatement of actions and penalties shall apply if they are favourable to the offenders, even if an enforceable sentence has been handed down." (case law, annex 1).

Penal Code, article 4:

"In criminal matters, the law shall not be interpreted extensively. The judge shall strictly follow the letter of the law. In case of doubt, the law shall be interpreted in the manner most favourable to the accused." (case law, annex 2).

Code of Penal Procedure, article 158 (same text as article 2 of the Penal Code).

Code of Penal Procedure, article 219:

"Before initiating pre-trial proceedings, the judge shall determine whether the act is classified as an offence under criminal law, subject to the obligation to pay damages, regardless of any criminal penalty that might apply." (case law, annex 3).

"(d) No person may be removed from the competent judge or tried by special courts or by ad hoc commissions, whatever their designation;

(e) No one may be punished without due process or deprived of the right of defence, at any stage or degree of the proceedings. Every person on trial for a criminal offence shall have the right to counsel, and to have witnesses called in his defence;

(f) No one shall be obliged to testify in criminal proceedings against his spouse or relatives within the fourth degree of consanguinity or second degree of affinity, or compelled to testify against himself under oath in any matter in which he may incur penal responsibility."

Corresponding legislation:

Penal Code, article 203:

"A judge or authority obliging an individual to give evidence against himself, his spouse, his ancestors, descendants or relatives to the fourth degree of consanguinity or the second degree of affinity, in matters which may entail criminal responsibility, is liable to a prison term of six months to three years."

Penal Code, article 204:

"A judge or authority who obtains such statements or confessions against the persons mentioned in the previous article by the use of beatings, detention, threats or torture shall be punished by two to five years' imprisonment and deprivation of civic rights for a period equal to that of the prison sentence.

The same penalty shall apply to police or law enforcement officials who commit the offence indicated in the previous paragraph."

Code of Penal Procedure, article 108:

"In no case shall a judge accept the co-accused as witnesses, or shall he accept the testimony of the accused's spouse or relatives to the fourth degree of consanguinity or the second degree of affinity."

Code of Penal Procedure, article 128:

"The accused shall not be compelled by physical or moral coercion to declare himself guilty of the offence. Similarly, the use of violence, drugs or any type of technique or method that undermines free and voluntary testimony is prohibited in both the procedural and the extraprocedural investigation.

Any officials, employees or police officers who contravene this provision shall incur the relevant penal sanction."

"(g) Every person shall be presumed innocent until such time as he is declared guilty under an enforceable judgement;

(h) No one may be deprived of his liberty except by a written order from a competent authority and in the circumstances, for the length of time and subject to the formalities prescribed by law, except in cases of flagrante delicto, where he still may not be held without trial for more than 24 hours; in any event, he may not be held incommunicado for more than 24 hours;

(i) Every person shall be informed immediately of the reason for his arrest;

(j) Any person who considers that he has been illegally deprived of his freedom may avail himself of the remedy of habeas corpus. He may exercise this right either personally or through another person, without need of a written order, by applying to the magistrate or President of the Council in his jurisdiction or whoever may be acting for him. The municipal authority shall immediately order the petitioner to be brought before it and the arrest warrant to be produced. Its instructions shall be obeyed without comments or excuses by the officials in charge of the social rehabilitation centre or place of detention.

When he has been informed of the background to the case, the magistrate or President of the Council shall, in the event of the detainee not being brought before him, or the order not being produced, or not fulfilling the legal requirements of the procedure being initiated, or of the appeal having been substantiated, order the immediate release of the petitioner. Any official or employee who fails to comply with the order shall be dismissed forthwith from his post or employment without any further formalities by the magistrate or the President of the Council, who shall report the dismissal to the Comptroller and to the authority which is required to appoint his replacement.

After having released the prisoner, the employee concerned may appeal against his dismissal to the Administrative Tribunal within eight days of being notified thereof."

The Political Constitution, article 20, stipulates as follows:

"The State and other entities of the public sector shall be required to compensate individuals for any damage they may suffer as a result of the operation of public services or acts performed by public officials and employees in the exercise of their functions.

The above-mentioned entities, in such cases, shall have the right to bring a third-party action and enforce the responsibility of those officials or employees who, through malice or gross negligence, as established by the courts, have caused the damage. The criminal responsibility of such officials and employees shall be established by the competent judges."

Article 21 of the Constitution further states that:

"When a conviction is revised or revoked as a result of an appeal for review, the person penalized by that conviction shall be rehabilitated and compensated by the State in accordance with the law."

The main provisions governing the institution of extradition under Ecuadorian legislation are contained in articles 3 and 4 of the Aliens Act, and articles 1-18 of the Regulations pertaining to the same Act, copies of which are attached (annex 4).

B. Paragraph 2

Article 59 of the Political Constitution of Ecuador stipulates:

"The National Congress shall meet in Quito on 10 August each year in plenary session, without the need for it to be convened, and shall sit for a non-extendable period of 60 days, to deal exclusively with the following matters:

(h) To approve or reject government treaties and other international conventions."

For its part, article 78 of the Constitution states that:

"The President of the Republic has the following powers and duties:

(a) To enforce and have enforced the Constitution, laws, decrees and international conventions;

(f) To decide foreign policy and direct international relations, enter into treaties and other international agreements in accordance with the Constitution and the law, to ratify such agreements subject to approval by the National Congress, to exchange or deposit, as appropriate, the relevant letters of ratification."

In turn, the first two paragraphs of article 5 of the Civil Code stipulate as follows:

"The law shall only become binding by virtue of its promulgation by the President of the Republic and after sufficient time to become informed thereof has passed.

The promulgation of laws and decrees shall be made in the Registro Oficial, and their date of promulgation, for legal purposes, shall be the date of the Registro."

In this connection, an up-to-date list of human rights agreements to which Ecuador is a party is attached (annex 5).

C. Paragraph 3

As regards existing legal and administrative procedures whereby individuals may enforce their rights, it should be mentioned that they are covered by article 19 (17) (j) of the Political Constitution, mentioned above.

In addition, article 458 of the Code of Penal Procedure governs the remedy of amparo de libertad, also known as the remedy of habeas corpus:

"Any accused person detained in violation of the standing precepts of this Code may address a request for his release to the judge superior to the one who ordered his deprivation of liberty.

When the complaint is submitted to the Supreme Court or the higher courts, it shall be heard by the President of the Court.

If the deprivation of liberty has been ordered by intendants, sub-intendants, police superintendents or political lieutenants, the complaint shall be submitted to any of the criminal judges of the relevant jurisdiction.

The application shall be made in writing.

The judge who is to hear the application shall, immediately after its receipt, order the detainee to be presented and hear his statement, which shall be taken down in a record to be signed by the judge, the clerk of the court and the petitioner, or in his place, by a witness, if he is unable to write. On the occasion of the statement the judge shall request all the data he considers necessary to form his opinion and ensure the legality of his judgement, and shall, within 48 hours, decide what he considers lawful. The decision shall be entered in the record mentioned in the previous paragraph.

If it is established that the deprivation of liberty is unlawful, the judge shall order the prisoner to be released immediately. The authorities and staff responsible for the custody of the prisoner shall be required to comply with the order.

A judge who has ordered an individual to be detained unlawfully shall be dismissed from office if he acted with evident malice; to this end, the superior who heard the application or complaint referred to by the present article shall immediately advise the appointing authority or body to carry out the dismissal, compliance being mandatory on pain of committing the offence of contumacy.

The same penalty of dismissal from office shall be incurred by a superior who abuses the power conferred on him by this article.

Persons responsible for guarding the prisoner who fail to comply with the order referred to in the fifth paragraph of this article shall also be dismissed.

The provisions of the foregoing paragraphs are without prejudice to any criminal responsibility deriving from the arbitrary detention." (case law, annex 6).

D. Paragraph 4

Article 141 of the Political Constitution states:

"The Court of Constitutional Guarantees shall be responsible for:

...

3. Considering complaints from any natural or legal person regarding violation of the Constitution in contravention of the rights and freedoms guaranteed by it and, if such complaints are found to be justified, drawing the matter to the attention of the relevant authority or body ...".

E. Paragraph 5

With regard to human rights information programmes, particular mention should be made of the seminars and lectures given by ALDHU and CEDHU staff for members of the national police in various provinces of the country.

The police force itself has organized various courses and lectures to update knowledge of investigatory techniques and procedures. One example is the course in investigation for police officers and the course for the Minors' Squad arranged as a result of the agreement between the Ministry of the Interior, the Ministry of Social Welfare and the National Institute for the Child and the Family (INNFA).

In addition, various seminars designed to enhance knowledge of international humanitarian law and human rights have been held in collaboration with the Ecuadorian Red Cross (annex 7).

In this connection, it should also be mentioned that the Directorate-General for Human Rights and Refugees of the Ministry of Foreign Affairs, acting in coordination with international organizations and national governmental and non-governmental bodies, is carrying out a training programme on international humanitarian law and human rights aimed at various segments of society under its programme of activities for 1991. In the course of the year a number of activities related to these subjects will be undertaken as new proposals are presented or requests for cooperation are made by other bodies interested in implementing additional programmes for the dissemination and promotion of fundamental human rights (annex 8).

F. Paragraph 7

This point was dealt with in the Ecuadorian representative's introduction of the initial report to the Committee against Torture.

G. Concerning the final part of the section on general information, section C of the present report refers to the remedies available to individuals to enforce their rights in the event of a violation.

PART II

H. Article 1 of the Convention

The provisions in Ecuadorian law relating to conviction for torture are mentioned in the first section of the present report.

Nevertheless, it is also important to consider the provisions referred to below:

Penal Code, article 187:

> "When an arrested or detained person is subjected to physical torture, the culprit shall be punished by three to six years' ordinary imprisonment.

The penalty shall be six to nine years' ordinary imprisonment if the torture results in any of the permanent injuries referred to in the section on injuries.

If the torture results in death, the culprit shall be punished by 12 to 16 years' rigorous imprisonment."

Code of Penal Procedure, article 57:

"Judicial Police officers shall be obliged to comply strictly with the legal formalities and regulations pertaining to inquiries made by them and shall refrain from using methods of investigation violating the human rights embodied in the Constitution, international agreements and the laws of the Republic, on pain of incurring responsibility."

Although Ecuadorian legislation does not contain a definition of torture, article 57 of the Code of Penal Procedure refers explicitly to international agreements embodying and protecting human rights, including the Convention against Torture, article 1 of which explains the scope of this term.

I. Article 2 of the Convention

In order to explain the consequences of an order from a hierarchical superior under criminal law, copies of two treatises on the subject by a well-known Ecuadorian jurist are attached (annex 9). In this connection, it should be mentioned that the appropriate consultations on the matter have been carried out with the legislative branch.

J. Paragraph 11

Safeguards for prisoners under investigation are included in the Political Constitution of the State and in various Ecuadorian laws.

The first step in the detention process is the presentation of the constitutional arrest permit or official document issued by the competent authority, except in cases of flagrante delicto.

Subsequently, the name of the person arrested is recorded in the police station register, and a police report addressed to the relevant Chief of Unit is drawn up, specifying the place, date, time and cause or ground of detention.

The prisoner is then given a medical examination in order to establish his physical and mental condition, following which he makes a statement in the presence of the relevant officer of the State Prosecutor General's Department.

The investigator issues a report on the results of the inquiries conducted and places the prisoner at the disposal of the competent authority.

Police personnel in charge of watching or guarding prisoners are responsible for their physical and mental integrity.

Article 19 (17) (h) of the Ecuadorian Political Constitution stipulates that, in the event of flagrante delicto, a prisoner may not be held for more than 24 hours without a judicial order.

Article 173 of the Code of Penal Procedure provides that, for the purpose of investigating the commission of an offence, the competent judge may order a person to be detained for not more than 48 hours, following which criminal proceedings must be instituted or else the prisoner must be immediately released.

Persons who believe that they are being detained unlawfully may address their complaints to the relevant authorities and also approach the communication media.

Any abuses committed by any member of the Criminal Investigation Service are punishable by disciplinary or judicial measures depending on the seriousness of the matter; in the latter case, the culprits may even be discharged from the police force.

K. Paragraphs 14 and 15

The inviolability of life and personal integrity is guaranteed in the Political Constitution (art. 19 (1)), and torture and any inhuman or degrading practice is a punishable and automatically prosecutable offence carrying a penalty of several years' imprisonment. Therefore, the Ecuadorian State could not regard such inhuman practices as legitimate and lawful without violating its own legal order and becoming an accomplice to such violations.

Consequently, the extradition and deportation measures provided for by the Aliens Act, involving handing a foreigner over to another State at its request or expelling him from the national territory, are set within the framework of the principles mentioned and are not contrary to article 3 of the Convention against Torture, since their execution entails a prior procedure with the fulfilment of a series of requirements ensuring a serious, impartial and fair trial which guarantees the accused the fullest possible exercise of the legitimate right of defence.

L. The text of article 5 of the Ecuadorian Penal Code and corresponding provisions of national legislation are attached (annex 10).

M.1. The Criminal Investigation Service (SIC) conducts investigations with a view to clarifying offences committed so as to preserve law and order and social peace.

In pursuing this aim, SIC has seven departments or squads supported by various offices. The whole forms the organizational and functional structure of the Service, as follows:

The Vehicle Theft Squad, responsible for investigating the theft of motor vehicles, motor- vcles and accessories, and for recovering them;

The Miscellaneous Department, responsible for controlling and preventing the offences of fraud, counterfeiting, etc.;

The Arrest Squad, whose task is to carry out orders issued by judges and police superintendents;

The Property Department, which traces and recovers stolen goods;

The Minors' Squad, responsible for solving problems related to the disappearance of minors, to possible offences committed by them, etc.; and

The Homicide Department, concerned with the investigation and elucidation of crimes against individuals and sexual offences.

The SIC also has a Central Archive in which it keeps files and records on persons who have been detained.

Attached are some press cuttings containing information on the possible establishment of a new body called "Judicial Police", which would replace the SIC (annex 11).

2. Some idea of the guarantees enjoyed by a detained person was given in section J of the present report.

3. With regard to compensation by the State for damage caused to individuals, reference should be made to articles 20 and 21 of the Political Constitution (reproduced above) and to article 459 of the Code of Penal Procedure, which provides: "The parties shall be entitled to bring an action for damages against judges and magistrates of the criminal courts, in the same cases as such an action is admissible in civil procedure."

N.1. The penalties applicable to those responsible for committing torture or related acts are laid down in articles 187, 204 and 205 of the Penal Code. In addition, section J of the present report gives a brief account of the penalties to which members of the police force who commit abuses during investigations may be subject.

2. With regard to the elimination of the use of violence in criminal investigations, many of the provisions cited earlier, in particular article 57 of the Code of Penal Procedure, are relevant.

Annexes *

1. Articles of the Code of Penal Procedure and the Civil Code: case law
2. Articles of the Civil Code: case law
3. Book Four, title I of the Code of Penal Procedure: case law
4. Aliens Act
5. International human rights instruments ratified by Ecuador
6. Book Five, title II of the Code of Penal Procedure: case law
7. Declaration concerning cooperation between the Ecuadorian Red Cross and the Ministry of the Interior and the police
8. Directorate-General for Human Rights and Refugees: programme of activities for 1991
9. Provisions of the Ecuadorian penal system
10. Other provisions of the Ecuadorian penal system
11. Press articles on the establishment of the Judicial Police in Ecuador.

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* These documents received from the Government of Ecuador may be consulted in the original Spanish in the files of the United Nations Centre for Human Rights.